



Commonwealth of Virginia
Virginia Information Technologies Agency

ENTERPRISE-WIDE MESSAGE BROKER SOFTWARE

Optional Use Contract

Date: July 30, 2003

Contract #: VA-020906-AG

Authorized User: State Agencies, Institutions and Public Bodies
as defined in the VPPA

Contractor: Software AG, Inc.
11190 Sunrise Valley Drive
Reston, VA 20191

FIN: 54-0943991

Contact Person: Sari Clark
703-391-8249

E-Mail Orders to: sari.clark@softwareagusa.com

Term: Sept 6, 2002 – Sept 5, 2003

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Compliance Information:
Mrs. T. J. Hudson
Contracts Administrator
Phone: 804-371-5971
E-Mail: tj.hudson@vita.virginia.gov
Fax: 804-371-5969

Technical Information:
Staff
Contract Officer
Phone: 804-371-5900
E-Mail:
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.oas.virginia.gov>

CONTRACT #VA-020906-AG
CONTRACT CHANGE LOG

[illegible]

	Software AG	
	Group Unix/Windows NT/Windows 2000	
Item #		
29	Message Broker/Integration Server (Legacy Bundle) *Note 1	
	EntireX Broker Adapter	\$25,779.00
	EntireX Adabas Adapter	\$25,779.00
	EntireX Generic RDBMS Adapter	\$25,779.00
	EntireX Basic Adapter Suite *Note 2	\$25,779.00
	Tamino Server	\$46,401.00
	EntireX Mediator	\$25,779.00
30	Message Broker/Annual Maintenance	
	EntireX Broker Adapter	\$4,640.00
	EntireX Adabas Adapter	\$4,640.00
	EntireX Generic RDBMS Adapter	\$5,156.00
	EntireX Basic Adapter Suite *Note 2	\$4,640.00
	Tamino Server - price per processor *Note 1	\$9,280.00
	EntireX Mediator - price per processor *Note 1	\$5,156.00
	Basic Adapters	
31	Basic File Adapters	included in LB
32	Basic File Adapters/Maintenance	included in LB
33	RDBMS	included in LB
34	RDBMS Maintenance	included in LB
35	MOM Adapter	not required *Note 3
36	MOM Adapter/Maintenance	not required
37	XML Adapter	not required
38	XML Adapter/Maintenance	not required
	Intelligent Adapters for Legacy Systems	
39	Oracle Financial Adapter	not required
40	Oracle Financial Adapter/Maintenance	not required
41	PeopleSoft Adapter	not required
42	PeopleSoft Adapter/Maintenance	not required
43	J.D. Edwards Adapter	not required
44	J.D. Edwards Adapter/Maintenance	not required
45	SCT-Banner Adapter	not required

46	SCT-Banner Adapter/Maintenance	not required
47	FRS Adapter	not required
48	FRS Adapter/Maintenance	not required
49	SAP Adapter	not required
50	SAP Adapter/Maintenance	not required
51	Custom Adapter	not required
52	Custom Adapter/Maintenance	not required
53	Adapter Development Toolkit	included in LB
54	Adapter Development Toolkit/Maintenance	included in LB
55	Education/Training - per hour	\$210.00
56	Consulting Services - per hour	\$210.00
Note 1		
	All products listed may be installed on most UNIX or Windows operating systems depending on how licensed.	
	EntireX Broker Adapter, EntireX Adabas Adapter, EntireX Generic RDBMS Adapter and EntireX Basic Adapter Suite are licensed on a per copy basis.	
	Tamino Server and EntireX Mediator are priced on a per processor basis and thus the license fee would be determined by the number of processors in the machine for which they are licensed. An increase in the number of processors would be considered a change in the machine and additional license fees would be due. However, Software AG will accept discounting the per-machine license price to be based on only those number of processors on the machine that are actually using the software provided the Commonwealth accepts restricting use of the software to only that subset number of processors on the machine.	
Note 2		

	EntireX Basic Adapter Suite includes File System, Socket and Program Adapters.	
Note 3		
	"Not Required" indicates that our proposed solution precludes the need for that adapter technology.	

DIT-62A 01/15/91	SCHEDULE	IFB NO. 02-027	Page: 6 of 9
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS

1. The Department of Information Technology (DIT) is seeking bids from responsive and responsible bidders for Enterprise-Wide Message Broker Products.
2. Up to five (5) Awards will be made to responsive and responsible bidders with the lowest evaluated total cost for Group OS/390 and up to five (5) awards will be made to responsive and responsible bidders with the lowest evaluated total cost for Group UNIX/Windows NT/Windows 2000.
3. The award of a contract does not guarantee that any items will be purchased from the contractor.
4. In the event a selected vendor defaults on delivery, the Commonwealth reserves the right to award to the next lowest responsive and responsible bidder.
5. All documentation and software media necessary for full operation shall be included in the stated price. License and registration materials for all supplied software shall be provided.
6. The vendor agrees that the Commonwealth may have a thirty (30) day software 'trial period'.
7. General Functionality

The following are minimum technical requirements. Bidders must describe how their products meet the requirements. Additional functionality should be included on a separate reference page.

Middleware Architecture

1. Comply with the Commonwealth of Virginia Information Technology Resource Management Standards and Guidelines issued December 7, 2001 (see: <http://www.dtp.state.va.us/pubs/dtp-pubs.htm#aaa>):
 - a. COV ITRM Standard MID2001-01.1
 - b. COV ITRM Guideline MID2001-01.1

Protocol Support

1. Support the following transport protocols/distributed technologies for outbound documents: HTTP / HTTPS / FTP / SMTP / Fax / DCOM / CORBA / EJBs

Message-oriented Middleware (MOM) Support

1. Support Message-oriented Middleware (MOM) (i.e., Microsoft MSMQ / IBM MQSeries / others)
2. Support Java Message Service (JMS) application programming interface (API)

DIT-62A 01/15/91	SCHEDULE	IFB NO. 02-027	Page: 7 of 9
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS

File Format Support

1. Support natively the following file formats: XML / delimited flat files/ positional flat files / EDI X12 / EDI EDIFACT
2. Provide templates for EDI transaction sets
3. Support custom file layouts using a graphical tool and importation of the definitions (i.e., DTD / Schema / others).
 - a. Support a repository (i.e., database/WebDAV/other) for storing the defined layouts/DTD/schemas.

Message Transformation

1. Support document transformation from one format to another and provide a graphic mapping tool to do transformation.
2. Support data changing and data manipulation.
3. Support message flow capabilities, and provide related graphic tools and intelligent adapters.
4. Support scripting languages support for customization and addition logic within message flows (i.e., VBScript and Javascript).
5. Support the development of custom adaptors.
6. Support transactional message flows.
7. Support user-level access of message definitions, transformations, adaptors, message-flows and data in a shared environment.
8. Support dynamic routing of documents.
9. Support a publish-and-subscribe messaging paradigm.
10. Support synchronous and asynchronous messaging.

Message Warehousing

1. Support message-tracking/message warehousing and related
 - a. Field-level selectivity
 - b. Server statistics/server usage
2. Support guaranteed message delivery.
3. Support error handling.
4. Support a repository for undeliverable messages.
5. Support custom 'plug-ins' or parsers that:
 - a. Provide APIs and tools
 - b. Support the following languages: any COM+ capable language such as Visual C++, Visual Basic, Visual FoxPro, PowerBuilder, any .Net language (C+ VB.NET), Java, ANSI C
 - c. Support the following platforms: Windows 2000, UNIX (Solaris, AIX, HP-UX), OS/390.
6. Support the development of custom adapters/integration components
 - a. Provide APIs and tools
 - b. Support the following languages: any COM+ capable language such as Visual C++, Visual Basic, Visual FoxPro, PowerBuilder, any .Net language (C+, VB.NET), Java, ANSI C
 - c. Support the following platforms: Windows 2000, UNIX (Solaris, AIX, HP-UX), OS/390.
 - d. Support intelligent adapters for the message broker
 - e. Provide the licensing model used.
 - f. Support third-party vendors offering adaptors for the message broker.

DIT-62A 01/15/91	SCHEDULE	IFB NO. 02-027	Page: 8 of 9
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS

7. Support native API for accessing product functionality and provide.

- Provide API tools.
- Provide support of additional languages.

Scalability

- Support clustering.
- Supporting scalable over time to include the possible deployment to entities throughout the Commonwealth.
- State what additional hardware; software, and other resources might be required at various transaction volume levels.
- Support increased usage volume without causing degradation of performance or reliability.
- Provide any scaling limitations within your solution.
- Support tools for basic reporting.

Administrative Tools

- Support remote administration and provide related tools.
- Support multiple instances of the product running on the same machine.
- Support version control and advise the current version of the product.
- Support the maintenance of status information.
- Support integrated of the product in an enterprise web portal environment
- Detail the licensing model used for the administrative tools.

Security

- Support security in the context of the infrastructure requirements above.
- Support IP Security Protocol (IPSec) policies for use with Layer 2 Tunneling Protocol (L2TP)/IPSec connections between service hosts.

8. It is the vendor's responsibility to inquire about and clarify any requirement of this IFB not clearly understood by the vendor. All verbal questions are discouraged. The Commonwealth will not be bound by verbal responses to questions. All inquiries concerning this IFB should be in writing to Robert Crawford at the address indicated in block 6 'Issuing Office'. All written inquiries must be received by the Issuing Office on or before 2:00 p.m. June 18, 2002. Facsimiles are acceptable at (804) 371-5969 or email to rcrawford@dit.state.va.us.

9. All bidders must be registered with DIT prior to award. The bidders federal identification number (FIN) should be placed in the appropriate box on page 1 of this bid solicitation. In the event the bidder does not supply the appropriate identification number, DIT may not be able to verify registration and the vendor's bid may be ruled non-responsive without appeal.

DIT-62A 01/15/91	SCHEDULE	IFB NO. 02-027	Page: 9 of 9
NAME OF CONTRACTOR		REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS

10. The Commonwealth reserves the right to request any bidder to submit information that may be necessary to clarify the bid and to submit any additional information which the Commonwealth deems necessary in order to evaluate the bidder's offer.

11. Contractual Terms and Conditions are attached to this solicitation document, DIT will not sign or execute any additional contract, license or other agreements containing contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT shall have no validity and the attached Terms and Conditions shall supersede all such agreements. Vendors should read and understand all of the terms and conditions prior to submission of a bid.

12. Acquisition Services Division (ASD) maintains an internet web site at <http://asd.state.va.us>. Vendors are requested to check this site prior to submitting bids, in the event the bid is amended or extended.

13. The results of this bid will not be given out by telephone. Vendors who wish to receive a copy of the bid results must include a self-addressed, stamped envelop along with their bid. Bid results will be posted to the ASD website.

14. Submissions of "no bids" is neither required or desired.

15. This public body does not discriminate against faith-based organizations.

16. After awards, agencies may select contractor(s) using the following steps:
 - a) determine agency's needs/requirements and evaluation criteria,
 - b) request a proposal from each contractor,
 - c) evaluate proposals based on stated evaluation criteria,
 - d) place Order with winning contractor(s).

CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BID (IFB) #2002-027

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or DIT (Department of Information Technology) will establish a Master Contract for use by State Agencies, Institutions and other Public Bodies, as defined in § 2.2-4301, Definitions of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users", for the acquisition of Software and Services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

10. CLARIFICATION OF TERMS

If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

11. PAYMENT

a. To Prime Contractor:

1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

b. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

12. PRECEDENCE OF TERMS

Paragraphs 1-12 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

13. QUALIFICATIONS OF BIDDERS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

14. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

15. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

16. MODIFICATIONS

This contract maybe modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the contract, the only authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

17. DEFAULT

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

18. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

19. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.

20. TRANSPORTATION AND PACKAGING

By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

21. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.

c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

d. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

22. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of 10 days.

23. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

24. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

25.

eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

B-6a

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

- b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

26. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

27. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

28. DELIVERY / SERVICE COMMENCEMENT DATES

- a. The Contractor shall be fully prepared to begin deliveries under this Contract within thirty (30) days of award. The Contractor shall deliver the requested software, or services ready for use, by the delivery date (day, month, year) identified on any Order.

b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the delivery date by notifying the Contractor at least ten (10) days before the delivery date.

c. If the software or services are not delivered within the time specified in the Schedule, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.

d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

29. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

30. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

31. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

32. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all software and Services specifically listed in the Schedule, and the notes in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to equipment and/or software acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for equipment acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

33. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

34. TERM

The initial Term of this Contract shall be for one (1) year, from the date of award. The Commonwealth at its own discretion, may renew this Contract for four (4) additional one (1) year periods at the prices quoted in the Schedule plus any allowable price escalations. The Commonwealth shall issue a writing stating its intention to renew, thirty (30) days prior to any expiration.

35. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

36. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

37. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

38. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, software and services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor (or thirty (30) days after delivery if customer installed) to test, evaluate and accept the materials, software and services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractor's materials, software or services fail to meet the Contract specifications or other requirements, including the specifications of the brand name (see paragraph 4 of the Solicitation Instructions), or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, software or services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, software or services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

39. FIELD MODIFICATIONS AND/OR ENGINEERING CHANGES

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the State at no additional charge for a period of one (1) year from the date of installation. The State reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

40. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

41. SERVICES WARRANTY

For Services employed to develop custom Software, the Contractor represents and warrants that the Services are guaranteed in that the developed products shall be software supported and maintained as defined herein by the Contractor at the prices identified herein.

For Services employed for consultation, the Contractor represents and warrants that the Services will be performed in conformance with good business practices and industry standards. The Contractor's price identified in the Schedule shall be inclusive of travel, meals, lodging, and any other costs required for the Contractor to provide the Services.

42. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the equipment or services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice"

identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

43. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

44. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and

receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

45. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

46. TITLE SOFTWARE

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

47. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

48. WARRANTY SOFTWARE

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of thirty (30) days (or such longer period as may be agreed to) after installation. Software Products that fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction or errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support 24 X 7, with a telephone response time of four (4) hours, and all costs and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

In addition, the Contractor agrees to provide all patches, fixes, revisions, updates, and releases to both the software/firmware and applicable documentation, which may be released by the software developer, for the duration of the warranty period.

49. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

50. CONFIDENTIALITY

Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

51. SOFTWARE SUPPORT/MAINTENANCE RESPONSIBILITIES

Upon expiration of the Software Warranty set forth herein, the Contractor shall provide an additional one (1) year period of Software support/maintenance Services at the prices identified in the Schedule.

52. SOFTWARE SUPPORT/MAINTENANCE RESPONSE

The Authorized User shall be entitled to unlimited telephone support 24 x 7, with a four (4) hour response time, for any Software Product acquired under this Agreement to include custom Software, wherein the Authorized User has elected to subscribe to Software support/maintenance services. Software support/maintenance Services shall also include all patches, and fixes and provision of enhancements to the Software Product as they are generally made available during the Software support/maintenance period.

53. SOFTWARE SUPPORT/MAINTENANCE CONTINUITY

Contractor will provide the required maintenance/software support services as defined in this Contract for a period not to exceed five (5) years. Such services shall be provided in accordance with the Contractor's price, set forth in the schedule, for a period of twelve (12) months. Maintenance increases for additional periods shall be effective on the anniversary date for each succeeding year. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer.

After the five (5) year Term of this Contract, the Commonwealth may continue to issue Orders for Software support/maintenance Services under this Contract, at its sole discretion. The Contractor shall be required to provide software support/maintenance Services to the Commonwealth as delineated herein for as long as the Contractor makes the Services generally available to others.

54. SOFTWARE SUPPORT/MAINTENANCE RENEWAL

Maintenance under this agreement shall be renewed at the option of the Authorized User. The Authorized User shall issue a written notification to the Contractor for each twelve (12) month period that maintenance services are required after the initial one (1) year maintenance period.

55. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

56. COMPLIANCE WITH FEDERAL LOBBYING ACT

- a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.
- b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.
- c. A representative of Contractor shall sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

57. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

58. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA

amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

59. NONVISUAL ACCESS TO TECHNOLOGY:

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but

applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

60. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's services offering include any goods or services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contract with regard to all obligations under this Agreement.
- and
- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection thereto

61. PRIME CONTRACTOR SPONSORED PRODUCT PROMOTIONS

The Prime Contractor, at his/her discretion, is allowed to sponsor product / Service promotions during the Contract term or any extensions thereof under the following conditions:

- 1) Prime Contractor is required to provide in writing to DIT, at least 5 days prior to the promotion, the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; the acceptable writing may be e-mail, or correspondence via USPS or other, and
- 2) Prime Contractor is required to identify in writing, the exact products / services covered in the promotion, and
- 3) Prime Contractor is required to identify in writing, the pricing during the promotion or the percentage discount, and
- 4) All Prime Contractor Sponsored Product / Service Promotions are required to be available to all Authorized Users of the Contract, should the Prime Contractor request a promotion that would be limiting, either through product configuration or quantities of products, the Commonwealth at its discretion, will not provide a written agreement. Both parties agree that promotions shall not target any one Authorized User, or a few Authorized Users, and
- 5) All Prime Contractor sponsored Product / Service Promotions shall be mutually agreed to in writing, and Prime Contractor shall be in breach of the Agreement in the absence of a writing from both parties; the writing may be e-mail or correspondence via USPS or other, and
- 6) In any instance of conflict between this clause, "Prime Contractor Sponsored Product / Service Promotions" and the Agreement, this clause shall take precedence. And

- 7) In any event wherein the Prime Contractor proposes prices that are different than the Contract prices to any Authorized User, without first obtaining mutual agreement in the format as identified herein, the Prime Contractor shall be in breach of the Agreement and the Commonwealth shall have all remedies available under Contract and law. And
- 8) The Commonwealth, at its discretion, may assist in advertising the promotion. This assistance will consist of advertising space on its (Commonwealth's) various web sites, or other assistance at its (Commonwealth's) discretion.

62. CREATION OF INTELLECTUAL PROPERTY

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

63. ORDERS

Authorized ordering officials representing the "Authorized Users" of this Contract may order Services from this Contract by one of the following Order methods:

- A. Purchase Order (PO): An official PO form issued by an Authorized User.
- B. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT.
- C. Charge/Credit Card:
 - 1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each Commonwealth Charge Card Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.

- 2) Any other order/payment charge or credit card process, e.g. AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.

D. eVA: An order placed through the eVA electronic procurement website portal <http://www.eva.state.va.us>

This ordering authority is limited to issuing Orders for Services that is available only under this Agreement. Notwithstanding the section herein, entitled Modifications, no Authorized User or other public body of the Commonwealth shall have the authority to modify this Contract.

64. TERMINATION FOR CONVENIENCE

This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

65. CUSTOM ADAPTER TRIAL PERIOD

CONTRACTOR AGREES TO A THIRTY (30) DAY TRIAL PERIOD FOR ALL CUSTOM ADAPTER SOFTWARE PRODUCTS IDENTIFIED HEREIN, COMMENCING AFTER THE PRODUCT ACCEPTANCE.

Subsequent to successful installation, and subsequent to the Acceptance period as defined herein, the Authorized User shall have an additional thirty (30) days to "Trial" any Custom Adapter purchased under this Agreement. The Authorized User may return the Custom Adapter within the Trial period with no further obligation, if at the Authorized User's sole discretion, the Custom Adapter does not meet the Authorized User's requirements. Should the Authorized User retain the Custom Adapter after the Trial period, then the payment process as delineated herein, shall commence.

66. PRICE INCREASES

Pricing for Non-custom Software and Custom Software shall be at the prices quoted in the Schedule herein for the entire five (5) year Term of this Contract. Pricing for Consulting Services shall remain as quoted in the Schedule for the first two (2) years of the Contract. Price increases for Consulting Services for years three (3) through five (5) shall be at the sole discretion of the Commonwealth and all price increases will be governed by the CPI-W index entitled "Other Services". Price increases for Software support/maintenance shall be allowable as identified in the paragraph entitled "Software support/maintenance Continuity" herein. Any percentage increase of any price shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If prices for Services remain the same or decrease for succeeding years, the Customer shall be afforded the opportunity to renew the Services at the lowest price available to any other Customer.

ATTACHMENT "A"
TO
IFB 2002-027

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Printed Name: _____

Organization: _____

Date: _____


M.C. Lee
M.C. Lee / Chief Financial Officer
Software AG, Inc.
July 11, 2002



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